



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12622/2017

THE IMMIGRATION ACTS

Heard at Bradford
On the 8th January 2019

Decision & Reasons Promulgated
On the 4th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

B K

(ANONYMITY DIRECTION CONTINUED)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer

For the Respondent: Mr J Greer, Counsel instructed by Howells Solicitors LLP

DECISION AND REASONS

1. In a decision promulgated on the 9th October 2018, I held that whilst the primary factual findings of First-tier Tribunal Judge Myers were unimpeachable, her assessment of the reasonableness internal relocation within Iraq was legally flawed. I now set out my own conclusions upon the issue of internal relocation having heard further evidence from the appellant's husband (BOA) at a hearing on the 9th January 2019.

Factual background

2. The following factual findings of Judge Myers are preserved.
3. The appellant is an Iraqi Kurd from Qaladze in the IKR where she lived with her brother and widowed mother. She has three uncles. They wanted her to marry her cousin. However, in June 2016, she was introduced by a work colleague to one 'BOA'. BOA lives in the UK but was visiting family in the IKR when they met. They remained in contact following BOA's return to the UK in August 2016. They subsequently married in secret whilst BOA was visiting the IKR between the 6th and 18th days of October 2016. In April 2017, one of the appellant's uncles (MR) renewed pressure on her to marry his son. At that point, the appellant's brother was forced to reveal that the appellant was already married. Her uncle and his son then violently assaulted her brother and held a gun to the appellant's head. They forced her brother to give them BOA's telephone number and switched on the speakerphone as they informed BOA that he had one month to divorce the appellant otherwise they would kill her. Her brother then arranged for the appellant to travel to the UK.

The appellant's case at the hearing

4. I did not hear evidence from the appellant. I did however hear evidence from her husband through the medium of a Kurdish Sorani interpreter. This may be conveniently summarised as follows.
5. The appellant gave birth to their daughter, BBO, on the 6th July 2018 and she is now pregnant with their second child. BOA was granted indefinite leave to remain on the 19th October 2018 and the appellant made an application to register BBO as a British citizen on the 5th December 2018. BOA is a director of Azamar Property Limited, trading as "Alldays". The appellant's family are from the Mangur Tribe with "close links throughout Kurdistan" [BOA's witness statement of the 8th December 2018] and they would try to locate and kill him were he to return to the IKR. BOA would not return to Iraq in any circumstances.

Additional factual findings

6. I am satisfied that (a) the appellant gave to birth to BBO on the 6th July 2018 and is now pregnant with her husband's second child, and (b) BOA was granted indefinite leave to remain in the UK on the 19th October 2018. These facts have been substantiated by reliable documentary evidence that can be found in the appellant's supplementary bundle of documents. I am also willing to accept BBO's uncorroborated testimony that there is currently a pending application to register BBO as a British citizen.
7. I do not however accept BBO's claim that he would not follow his pregnant wife and his daughter if they were they forced to return to Iraq. He had to be asked three times whether he would do so before he finally answered that question. His first two replies were to the effect that he had spent his "whole life" in the UK (which is not of course true) and that he had his own business here. When he did eventually answer

the question, he said that he would choose to remain in the UK even if this meant being separated indefinitely from his wife and daughter. He then promptly contradicted this reply by adding that he would do everything in his power to protect his wife. I find it wholly implausible that the appellant would consider it more important to maintain his business links to the UK than preserve a meaningful relationship with his wife and daughter in Iraq. I am therefore satisfied that the appellant was being evasive because he feared that a straightforward and truthful reply would damage his wife's case for remaining in the UK. It follows from this that, contrary to the finding made by Judge Myers, the appellant would not be returning to Iraq without her husband.

8. The following facts were agreed by the representatives at the hearing. The population of the IKR is 5.7 million, the population of the Erbil governate is 2.1 million, and the population of Erbil City is 852,000.

The rival submissions

9. Mrs Pettersen submitted that if the appellant and her husband were able to marry in secret they should have little difficulty in maintaining their anonymity upon relocating within the IKR. Whilst there was evidence of 'honour killings taking place in the Danish Immigration Service Report (beginning at page 82 the appellant's supplementary bundle) it did not establish that the appellant's family would be able to trace her whereabouts.
10. Mr Greer pointed out that three of the appellant's uncles were high-ranking officers in the Peshmerga (a retired Major General, a Brigadier, and a Lieutenant Colonel respectively). He drew attention to background country information demonstrating that BBO would also be at risk of being killed by the appellant's family members in the IKR [page 100 in the supplementary bundle] and to evidence of the whereabouts of couples being traced and killed in the IKR for perceived crimes of dishonour [page 105]. Even if the appellant and her husband would not be in danger upon relocating within the IKR, it would be unduly harsh to expect them to do so given (a) BOA's lack of recent experience of living and working there, (b) the difficulties caused in providing care for two young children whilst supporting themselves financially, (c) their natural reluctance to seek assistance from the IKR authorities given the associated risk of giving away their location to the appellant's relatives.

Analysis and conclusion

11. Notwithstanding their high-ranking positions in the Peshmerga, I am not satisfied that there is a real risk of the appellant's uncles being able to locate her in a city with a population of 852,000 in a governorate with a population of 2.1 million. The only evidence to the contrary comes from Hana Swann of the Women's Media and Cultural Organization (WMCO) which appears in the Danish Immigration Service Report, beginning at page 103 of the appellant's bundle of documents. This gives a single example of a couple being killed by the wife's family after "hiding for some time". I am struck by the vagueness of this report. I also consider that the source of the information is prone to exaggeration, given that s/he "did not reply" when asked

to give an example of the claim that couples have been traced and then killed after fleeing to Europe [paragraphs 87 to 89 at page 105].

12. I am however satisfied that it would be unduly harsh to expect the appellant to relocate with her husband to Erbil. Although BOA has experience of working over many years in the UK, this has been in connection with the off-licence trade. Such experience is very unlikely to be of benefit to him in the IKR. Adding to his difficulties is the fact that he has not resided in the IKR for some eight years. Thus, whilst the appellant may have access to £1,500 under the Voluntary Returns Scheme, this would likely rapidly become exhausted by the costs of food and renting an apartment for a rent of between \$300 and \$400 a month [**AAH Iraq CG**]. It is thus unlikely to tide them over until BOA was able to find work. They would thus likely find themselves forced to reside in 'critical shelter accommodation' of the type characterised as 'unduly harsh' in **AAH**. Given that the appellant and her husband appear to have been able to travel freely between Iraq and the UK in 2016, I am not satisfied that they would face any significant difficulties in securing either a passport or a CSID card. There is however a real risk that they will face such difficulties in relation to their daughter whose existence, combined with the fact that the appellant is now pregnant, would compound the practical difficulties of her parents relocating to an area with which neither of them is familiar and to which they have no existing social or economic ties. Whilst I have not found their fear of being traced to Erbil well-founded, I nevertheless accept that there is force in Mr Greer's point that the appellant may be reluctant to access local services as a result of her subjective fear that this may lead to her whereabouts being discovered.

Notice of Decision

B K's appeal against the respondent's refusal of her Protection Claim is allowed.

Deputy Upper Tribunal Judge Kelly

Date: 23rd January 2019

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.